

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN RE:)
)
RANDY'S METAL RECYCLING, INC.) CASE NO. 15-30142
) CHAPTER 11
)
)
Debtor

**UNITED STATES TRUSTEE'S OBJECTION TO MOTION OF DEBTOR-IN-
POSSESSION FOR SUBSTANTIVE CONSOLIDATION**

NANCY J. GARGULA, United States Trustee ("U.S. Trustee"), by Ellen L. Triebold, Trial Attorney, pursuant to 28 U.S.C. § 586(a)(3)(D) and 11 U.S.C. § 105, respectfully files this Objection to the Motion of Debtor-In-Possession for Substantive Consolidation ("Objection"), and in support thereof, states:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 151, 157, and N.D. Ind. L.R. 200-1. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue in this Court is proper under 28 U.S.C. § 1409(a).
2. The U.S. Trustee monitors the administration of cases under Chapters 7, 11, 12 and 13 of the Bankruptcy Code pursuant to 28 U.S.C. § 586(a)(3) and has standing under § 307 to raise, appear, and be heard on any issue in any bankruptcy case or proceeding.
3. On January 30, 2015, the Debtor filed its voluntary Chapter 11 petition, Schedules, Statement of Financial Affairs, and related bankruptcy documents.
4. Also on January 30, 2015, the Debtor-In-Possession filed its Motion for Substantive

Consolidation (“Motion”) of the following cases:

Gertrude Street Metal Recycling, Inc., case no. 15-30141
Randy’s Metal Recycling, Inc., case no. 15-30142
Going Green Metal Recycling, Inc., case no. 15-30143
NRJ Real Estate, LLC, case no. 15-30144
Randy’s Territorial, LLC, case no. 15-30145

5. Pursuant to a notice filed on February 3, 2015, the deadline to object to the Motion is February 26, 2015.
6. On information and belief, the Debtors-In-Possession in these five cases are not seeking joint administration under FRBP 1015; rather, they are seeking substantive consolidation under § 105, which “occurs when the assets and liabilities of separate and distinct legal entities are combined in a single pool and treated as if they belong to one entity.” *In re Carroll*, 520 B.R. 491, 496 (Bankr. M.D. La. 2014) (citations omitted).
7. Substantive consolidation lies within this Court’s general equitable powers and should be used cautiously because it has a dramatic impact on the rights of the parties in bankruptcy. *Matter of Steury*, 94 B.R. 553, 554 (Bankr. N.D. Ind. 1988).
8. The Debtors-In-Possession bear the burden of proving the propriety of substantive consolidation, showing both “that there is a need for consolidation and then that the benefits of consolidation outweigh whatever harm it might create.” *Id.* at 554.
9. It is not clear at this early stage of the Chapter 11 process or from the Motion or the documents filed to date that substantive consolidation is appropriate or that its benefits outweigh any harm.
10. The U.S. Trustee is in the process of soliciting interest in creditors’ committees in these cases pursuant to her duties under § 1102. The Meetings of Creditors under § 341 are currently set for March 9, 2015, in these cases. The Initial Debtor

Conferences between these Debtors and the U.S. Trustee's Office have not been held yet, nor have any documents been yet received in anticipation of the meeting(s).

11. At this point, and without further information, the U.S. Trustee, creditors, and parties in interest cannot evaluate whether there is a need for consolidation and whether its benefits would outweigh whatever harm it may create.

WHEREFORE, the United States Trustee respectfully objects to the Motion of Debtor-In-Possession for Substantive Consolidation, requests a hearing if necessary, and requests all other proper relief.

Respectfully submitted,

NANCY J. GARGULA
UNITED STATES TRUSTEE

By: /s/ Ellen L. Triebold
Trial Attorney

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served electronically through the Bankruptcy Clerk's ECF System or by First Class United States Mail this February 4, 2015 upon the following parties:

R. William Jonas, Jr.
Hammerschmidt, Amaral & Jonas
137 N. Michigan Street
South Bend, IN 46601

_____/s/ Ellen L. Triebold _____

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